



# Idaho Statutes

## TITLE 19 CRIMINAL PROCEDURE

### CHAPTER 25 JUDGMENT

19-2524. SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT.[EFFECTIVE UNTIL MARCH 1, 2013] (1) When a defendant has pled guilty to or been found guilty of a felony, or when a defendant who has been convicted of a felony has admitted to or been found to have committed a violation of a condition of probation, the court, prior to the sentencing hearing or the hearing on revocation of probation, may order the defendant to undergo a substance abuse assessment and/or a mental health examination.

(2) If a substance abuse assessment ordered pursuant to this section indicates that the defendant is a drug addict or alcoholic, as those terms are defined in section 39-302, Idaho Code, then the assessment submitted to the court shall also include a plan of treatment. If the court concludes at sentencing that the defendant is a drug addict or alcoholic, as those terms are defined in section 39-302, Idaho Code, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court.

(3) (a) If a mental health examination is ordered pursuant to this section, the report of the mental health examination shall include the following:

- (i) A description of the nature of the examination;
- (ii) A diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (iii) An analysis of the degree of the defendant's illness or defect and level of functional impairment;
- (iv) A consideration of whether treatment is available for the defendant's mental condition;
- (v) An analysis of the relative risks and benefits of treatment or nontreatment;
- (vi) A consideration of the risk of danger which the defendant may create for the public if at large; and
- (vii) A plan of treatment if the mental health examination indicates that:

- 1. The defendant suffers from a severe and reliably diagnosable mental illness or defect;
- 2. Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the defendant;
- 3. Treatment is available for such illness or defect; and
- 4. The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

(b) If the court, after receiving the mental health assessment and plan of treatment, determines that additional information is necessary to determine whether the factors listed above in subsection

(3) (a) are present, or to determine an appropriate plan of treatment, the court may order an evaluation and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.

(c) If the court concludes at sentencing that all of the factors listed above in subsection (3) (a) are present, and if the court places the defendant on probation, then the court may order as a condition of probation that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court.

(4) Where the court has ordered either a substance abuse assessment or mental health examination of the defendant pursuant to this section, the court shall also order a criminogenic risk assessment of the defendant if such an assessment is not provided in the presentence report. Any substance abuse assessment or report of mental health examination shall, in addition to the criminogenic risk assessment, be delivered to the court, the defendant and the prosecuting attorney prior to the sentencing or the hearing on revocation of probation.

(5) If the defendant is sentenced to the custody of the board of correction, then any substance abuse assessment, report of mental examination, plan of treatment or criminogenic risk assessment shall be sent to the department of correction along with the presentence report.

(6) The expenses of all screenings and assessments for substance use disorder provided or ordered under this section shall be borne by the department of correction. The expenses for treatment provided or ordered under this section shall be borne by the department of correction unless the defendant is placed in a treatment program that is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to defendants for the substance use disorder assessments and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of correction shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(7) The expenses of all mental health examinations and treatment provided or ordered by the court pursuant to this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled for the examinations and treatment, and to any payment from any public or private source available to the department of health and welfare because of the examinations and treatment provided to the defendant. The department of health and welfare is authorized to promulgate rules for a schedule of fees to be charged to defendants for the mental health examinations and treatments provided to the defendants based upon the costs of such services and the ability of the defendants to pay. The department of health and welfare shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

19-2524. CONSIDERATION OF COMMUNITY-BASED TREATMENT TO MEET BEHAVIORAL HEALTH NEEDS IN SENTENCING AND POST-SENTENCING PROCEEDINGS.[EFFECTIVE MARCH 1, 2013] (1) After a defendant has pled guilty to or been found guilty of a felony, and at any time thereafter while the court exercises jurisdiction over the defendant, behavioral health needs determinations shall be conducted when, and as provided by, this section.

(a) As part of the presentence process, a screening to determine whether a defendant is in need of a substance use disorder assessment and/or a mental health examination shall be made in every felony case unless the court waives the requirement for a screening. The screening shall be performed within seven (7) days after the plea of guilty or finding of guilt.

(b) At any time after sentencing while the court exercises jurisdiction over the defendant, the court may order such a screening to be performed by individuals authorized or approved by the department of correction if the court determines that one is indicated. The screening shall be performed within seven (7) days after the order of the court requiring such screening.

(2) Substance use disorder provisions.

(a) Should a screening indicate the need for further assessment of a substance use disorder, the necessary assessment shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening. The assessment may be performed by qualified employees of the department of correction or by private providers approved by the department of health and welfare. If the screening or assessment is not timely completed, the court may order that the screening be performed by another qualified provider.

(b) Following completion of the assessment, the results of the assessment, including a determination of whether the defendant meets diagnostic criteria for a substance use disorder and the recommended level of care, shall be submitted to the court as part of the presentence investigation report or other department of correction report to the court.

(c) Following the entry of a plea of guilty or a finding of guilt, the court may order, as a condition of the defendant's continued release on bail or on the defendant's own recognizance, that if the assessment reflects that the defendant meets diagnostic criteria for a substance use disorder, the defendant shall promptly, and prior to sentencing, begin treatment at the recommended level of care.

(d) If the court concludes at sentencing, or at any time after sentencing while the court exercises jurisdiction over the defendant, that the defendant meets diagnostic criteria for a substance use disorder, and if the court places the defendant on probation, the court may order the defendant, as a condition of probation, to undergo treatment at the recommended level of care, subject to modification of the level of care by the court. If substance use disorder treatment is ordered, all treatment shall be performed by a qualified private provider approved by the department of health and welfare. The court may order that if the level of care placement or the treatment plan is modified in any material term, the department of correction shall notify the court stating the reason for the modifications and informing the court as to the clinical alternatives available to the defendant.

(e) In no event shall the persons or facility doing the assessment be the person or facility that provides the treatment unless this requirement is waived by the court or where the assessment and treatment are provided by or through a federally recognized Indian tribe or federal military installation, where diagnosis and treatment are appropriate and available.

(f) Defendants who have completed department of correction institutional programs may receive after care services from qualified

employees of the department of correction.

(g) The expenses of all screenings and assessments for substance use disorder provided or ordered under this section shall be borne by the department of correction. The expenses for treatment provided or ordered under this section shall be borne by the department of correction unless the defendant is placed in a treatment program which is funded by an alternate source. The department of correction shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of correction for the service provided to the defendant. The department of correction may promulgate rules for a schedule of fees to be charged to defendants for the substance use disorder assessments and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of correction shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(3) Mental health provisions.

(a) Should the mental health screening indicate that a serious mental illness may be present, then the department of correction shall refer the defendant to the department of health and welfare for further examination. The examination shall be timely performed so as to avoid any unnecessary delay in the criminal proceeding and not later than thirty-five (35) days after a plea of guilty or finding of guilt or other order of the court requiring such screening.

(b) The examination may be performed by qualified department of health and welfare employees or by private providers under contract with the department of health and welfare, provided that such examination shall at a minimum include an in-depth evaluation of the following:

- (i) Mental health concerns;
- (ii) Psychosocial risk factors;
- (iii) Medical, psychiatric, developmental and other relevant history;
- (iv) Functional impairments;
- (v) Mental status examination;
- (vi) Multiaxial diagnoses; and
- (vii) Any other examinations necessary to provide the court with the information set forth in paragraph (c) of this subsection.

(c) Upon completion of the mental health examination, the court shall be provided, as part of the presentence report or other department of health and welfare report to the court, a copy of the mental health assessment along with a summary report. The summary report shall include the following:

- (i) Description and nature of the examination;
- (ii) Multiaxial diagnoses;
- (iii) Description of the defendant's diagnosis and if the defendant suffers from a serious mental illness (SMI) as that term is now defined, or is hereafter amended, in IDAPA 16.07.33.010, to also include post-traumatic stress disorder;
- (iv) An analysis of the degree of impairment due to the defendant's diagnosis;
- (v) Consideration of the risk of danger the defendant may create for the public; and
- (vi) If the defendant suffers from a serious mental illness the report shall also include a plan of treatment that addresses the

following:

1. An analysis of the relative risks and benefits of treatment versus nontreatment;
2. Types of treatment appropriate for the defendant; and
3. Beneficial services to be provided.

(d) If the court, after receiving a mental health examination and plan of treatment, determines that additional information is needed regarding the mental condition of the defendant or the risk of danger such condition may create for the public, the court may order additional evaluations and/or recommendations for treatment to be furnished by a psychiatrist, licensed physician or licensed psychologist.

(e) If the court concludes that the defendant suffers from a serious mental illness as defined in paragraph (c)(iii) of this subsection and that treatment is available for such serious mental illness, then the court may order, as a condition of the defendant's release on bail or on the defendant's own recognizance or as a condition of probation, that the defendant undergo treatment consistent with the plan of treatment, subject to modification of the plan of treatment by the court. If the plan of treatment is modified in any material term, the department of health and welfare shall notify the court in a timely manner stating the reasons for the modification and informing the court as to the clinical alternatives available to the defendant.

(f) If treatment is ordered, all treatment shall be performed by a provider approved by the department of health and welfare.

(g) The expenses of all mental health examinations and/or treatment provided or ordered under this section shall be borne by the department of health and welfare. The department of health and welfare shall be entitled to any payment received by the defendant or to which he may be entitled from any public or private source available to the department of health and welfare for the service provided to the defendant. The department of health and welfare is authorized to promulgate rules for a schedule of fees to be charged to defendants for the mental health examinations and treatments provided to the defendants based upon the actual costs of such services and the ability of a defendant to pay. The department of health and welfare shall use the state approved financial eligibility form and reimbursement schedule as set forth in IDAPA 16.07.01.

(4) Unless otherwise ordered by the court, if the defendant is in treatment for a substance use disorder or mental illness, any substance use disorder assessment required under subsection (2) of this section or mental health examination required under subsection (3) of this section need not be performed while the defendant is in such treatment. In such circumstances, the court may make such order as it finds appropriate to facilitate the completion of the sentencing process or other proceeding before the court, including providing for the assessment and treatment records to be included in the presentence investigation report or other report to the court.

(5) Any substance use disorder assessment including any recommended level of care or mental health examination including any plan of treatment shall be delivered to the court, the defendant and the prosecuting attorney prior to any sentencing hearing or probation revocation hearing.

(6) A substance use disorder assessment prepared pursuant to the provisions of this section shall satisfy the requirement of an alcohol evaluation prior to sentencing set forth in section 18-8005(11), Idaho

Code, and shall also satisfy the requirement of a substance abuse evaluation prior to sentencing set forth in section 37-2738, Idaho Code.

(7) If the defendant is sentenced to the custody of the board of correction, then any substance use disorder assessment, mental health examination or plan of treatment shall be sent to the department of correction along with the presentence report.

**History:**

[19-2524, added 2007, ch. 310, sec. 1, p. 875; am. 2012, ch. 225, sec. 2, p. 612; am. 2012, ch. 225, sec. 3, p. 614.]

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